

Indians Made White Men by Court Ruling

Montauks Who Sought Tribal Rights Deeded Away in 1660 Lose Complicated Suit

THE long drawn out legal struggle of half a dozen descendants of the Montauk Indian tribe to have certain old tribal rights in Montauk Point lands restored to them by the State courts has finally ended in failure through an adverse decision by the Court of Appeals. Even should the Indian plaintiffs try to carry their case on up to the highest tribunal at Washington there seems to be little if any chance that they could do it, because although the case involved a constitutional point several other points equally vital have, like that one, been decided for the owners of the lands.

Besides the picturesqueness of a self-styled Indian chief going at this late date and this state of world's affairs on the warpath of briefs and pleadings to win back on behalf of a tribe the rights of their pre-Colonial fathers in land as close to New York as the other extremity of Long Island, the case was also unusual in being concerned with common land. Montauk Point until 1879 was jointly owned by the inhabitants of East Hampton, but as individuals and not as a corporation.

Common Land Rarely Held.

Common land nowadays is as rare as dodos' eggs and almost as rarely comes up in American courts.

The handful of more or less pedigreed Montauks who call themselves the tribe began their fight nearly twenty-five years ago. They undertook to bring suit against the estate of Arthur W. Benson, who had bought the Montauk Point property from its owners, the people of the town, and also against several real estate and railroad companies to which parts of Mr. Benson's purchase had been sold by his heirs.

Indians as a tribe have no standing before our courts, but since it was a tribal privilege he was after the chief, Wyandank Pharaoh by name, could not very well go to law for it as an individual. The matter hung fire till 1906, when, with the huge approval of the landowners, who wanted the contention settled, the Indians went before the Legislature and had passed an enabling act under which they could sue as a tribe, though the question whether they actually were one was expressly reserved to be determined by the court. Later their counsel tried to have this act construed as establishing their tribal status—one of the points on which the whole case turned. He failed.

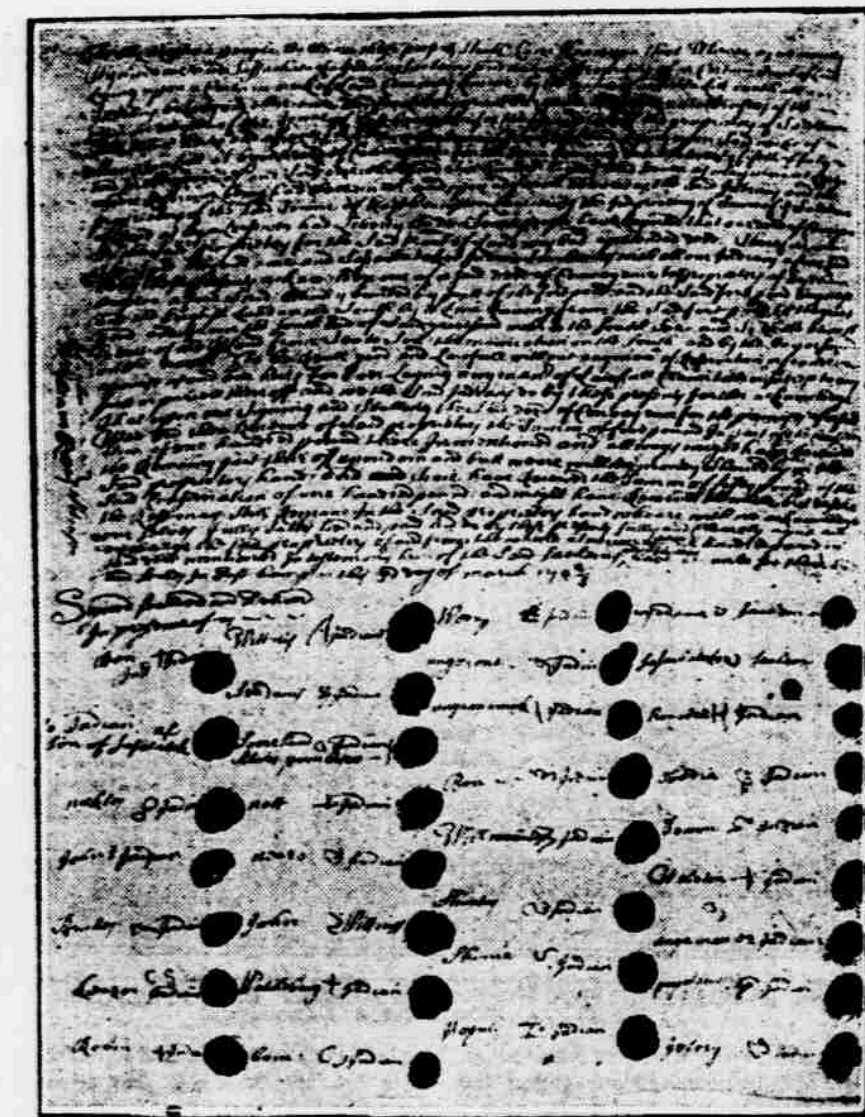
Dates Back to Seventeenth Century.

The history of the land title and of the Indians' rights goes back to the middle of the seventeenth century, when the Montauks, whose domain till then had been the whole of Montauk point, fell afoul of the tribe of Narragansetts, who came over in force to Block Island and nearly wiped them out. The survivors about 1660 moved to East Hampton to live under the protection of the whites, who presently bought from them "all the neck of land called Montauk." The purchase was made jointly by Thomas Baker and others, the inhabitants of East Hampton, the land becoming common property not of the town but of the townspeople.

This was in 1661. In 1666 a patent granted by Richard Nicolls, the English Governor-General of the colony, ratified and confirmed their title in all land they had bought from the Indians and might thereafter buy. In 1670 they bought some more of the Point, which the Indians deeded, Gov. Lovelace confirming the conveyance.

In 1686 the redoubtable Gov. Thomas Dongan granted a confirming patent which mentioned that a certain tract remained unpurchased and reserved to the townspeople sole purchase rights for the future. In 1687 the Indians sold the remaining tract to the townspeople, giving an absolute deed.

The tract in question was the "Indian field," which has turned out to be the only tract concerned in the modern suit, though the Indian plaintiffs and their lawyers seemed to think when it began that their action concerned the whole



Deed of Release given by the Montauk Indians, March 3, 1703. The black spots are the thumb marks of the signers, showing that finger printing was a known art even in those early days.

Point and not merely tribal rights but full title in the same.

In the same year the grantees, the townspeople, gave the Indians a bond allowing them to "plant what corn soever they have occasion for to plant from time to time" on payment of a yearly rental of one ear of corn.

Some question arising about the validity of the Indian deed, the Indian rights were further defined and established in 1702, when the Indians confirmed the deed by a further instrument and made an agreement with the townspeople under which they might fence in a certain tract on North Neck, which tract, however, was to be open at certain seasons to the townspeople for pasturage.

Title Held by Townspeople.

Otherwise the Indians might keep their own swine, horses and cattle in this tract, but not pasture any one's else, nor sell the hay. Title in the land remained in the people of the town, who later objected to strange Indians coming on their property. This point was covered to their satisfaction by a further agreement made in 1754, which reserved the tribal rights to full blooded Montauks and to the Montauk tribe itself so long as they should live on Montauk Point.

These various deeds, patents and agreements, an interesting and valuable collection of old documents, some of them studded with scores of the colonists' seals, others signed at great length with the marks made by the Indians, define and establish the tribal rights in question. All were exhibited as evidence in the course of the lawsuit just closed.

In 1850 question arose in East Hampton as to whether the title in the land belonged to the town as a corporation or to the inhabitants as common owners, and in the following years as the result of an action at law a judgment was entered settling the point that the land was in fact common land. Previously, since Colonial times, it had been managed by the town trustees; a law was now passed chartering a special corporation for the purpose.

In the course of nearly two centuries the title of the original owners had become so ramified by inheritance that the heirs at last decided to liquidate and settle up. The result of an action in partition was, in 1878, the sale of the property through the referee to Mr. Benson.

The new owner found himself obligated to the surviving Montauk Indians, whose tribal rights of pasture and corn growing still constituted a lien upon his land. In 1885, therefore, he bought these rights of the few Indian families still connected on Montauk Point and composing what purported to be the remnant of the original tribe. They were living in little shacks, cultivating the ground in

Indian fashion, fishing and hunting, and irregularly, when they needed money, going off to work for hire.

In consideration of their deeds or releases of their rights Mr. Benson paid them sums varying between \$50 and \$350, gave annuities of \$240 to heads of families and moved the families to East Hampton, where he further gave tracts of land, the smallest of an acre each, the largest of twenty-seven acres, and gave the houses and other buildings on these tracts, or in some instances built new houses, full title in which went to the Indian occupants.

The original complaint in the suit brought by Wyandank Pharaoh as chief of the tribe alleged that these deeds or releases were obtained from the Indians by "fraud or undue influence" on the part of Mr. Benson. At the trial this allegation speedily fell through.

One feature of the testimony, really demanding the pen of Mark Twain, was the circumstance that later, when these Indians—who were shown, by the way, to be of mixed blood, the admixture being negro in several cases—began to pine for restitution to the homes, or at least the rights, of their noble forefathers, they flatly refused in the event of getting what they pined for to give up their new holdings at East Hampton!

Many Defendants Named.

The defendants were Jane Ann and Mary Benson, as executrices of the will of the owner; John W. Pierrepont and Henry R. Hoyt as executors and trustees under the will of Frank Sherman Benson, an heir deceased; Mary Benson, an heir, and the Montauk Company, the Montauk Dock and Improvement Company, the Montauk Extension Railroad Company and incidentally the Long Island Railroad Company. The several companies came in because they had bought parts of Montauk Point from the Benson estate.

The principal questions at issue were these: Did the surviving Montauks legally constitute a tribe? If so had the tribe abandoned the rights that had been a lien upon the property? And had the deeds and releases to Arthur W. Benson been fairly obtained?

When the Indians started their battle, about 1895, they seemed to think they had claim, not to tribal rights, but to the fee or title itself and that the land in question was the whole of Montauk Point instead of the comparatively small section known as the Indian field. They found out their mistake before the enabling act was passed, but went on to contest for restitution of the tribal rights.

Meanwhile the publicity attending the mistaken claim had inspired a great deal of emotional public protest against "the mistreatment" of "the hapless red man"

History of Valuable Long Island Realty and Litigation Covers Almost Three Centuries

as exemplified in the Montauks. At least one burning work of fiction was produced upon this theme; its plot turned on the contention that the "lost" deeds by which the Long Island colonists had originally acquired title had been scandalously obtained; in short, that the simple minded Indians had been swindled by the English or possibly there never had been any deed.

At the time when Charles K. Carpenter of Daly, Hoyt & Mason, counsel for Arthur W. Benson's immediate heirs and for one of the companies, was at East Hampton gathering material he happened to pick up this book at the public library. He read it with delighted interest, because the incontestable deed, the document itself, reposed at that moment in his office safe!

Lost Case Right at the Start.

The case came to trial in October, 1909, before Supreme Court Justice Abel E. Blackmar without a jury. His opinion, rendered a year later, was adverse to the Indian plaintiffs on all points. He found that the surviving Montauks were no longer living in tribal relations, that the tribe had been disintegrated and absorbed into the mass of citizens and that at the time when the action commenced there had been no Montauk tribe.

Also he found that the Indians had abandoned their rights and privileges in the land, and that their releases to Mr. Benson had been voluntarily executed in good faith for valuable considerations.

The testimony of the Indians had made it clear that they themselves had practically lost sight of their tribal usages and could not even agree about the method of succession of the kingship or chieftainship until the time when Wyandank Pharaoh began his campaign for restitution. At that point he went into the kinging business very actively and was recognized as king by the other Indians, so far as his proceedings in bringing the lawsuit were concerned.

Judgment dismissing the complaint was entered in November, 1910. Appeal was taken and in October, 1914, the Appellate Division of the Second Department unanimously affirmed the judgment, deciding that the findings were supported by the evidence. Appeal from this judgment and the order of affirmance has been decided adversely within a few weeks by the Court of Appeals, which seems to settle the matter once for all.

How Indians Live at Present.

The pedigrees, places of residence and living conditions of the so-called tribal members were exhaustively examined by the defendants' lawyers in the course of the trial. By the Indians themselves, the plaintiffs' witnesses, it was established that the present day Montauks are dwelling among the whites of East Hampton as members of the community, holding land and paying taxes; that some of them have tried to vote, that others, including Wyandank Pharaoh himself, live at Sag Harbor, seven miles away; that there is nothing like an Indian community life or government any more.

As for the "tribe" bringing the suit, it was described as an extemporized association formed for that purpose, with some idea in the Indians' minds of "getting Montauk back."

After the contention simmered down to the tribal rights there was no gain in money or other value at stake; on the contrary, a distinct loss, the difference between good homes and town benefits at East Hampton and a primitive existence on the former Indian field. At all events, it looks as if the Indians will have to stick to their bargain, stay in their good houses and go on enjoying their annuities and other benefits from the release of the tribal rights.

The deeds, releases and other papers from the Indians furnish one of the largest collections of Indian title documents known to exist. It is understood that they will be placed in the hands of the Long Island Historical Society for preservation and will furnish a valuable addition to the large collection of original documents relating to Long Island which that institution already possesses.